

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.854 OF 2015

Bramha M. Mhatre V/s. The State of Maharashtra

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Prothonotary's orders	Court's or Judge's orders
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Mr.Ashok P. Mundergi, Senior Advocate i/by Mr.Rajesh Srivastava,
for the applicant-appellant.

Mr.A.R. Patil, APP for the respondent-State.

CORAM : A.R. JOSHI, J.
DATE : 04TH AUGUST 2015

P.C.:

1. Heard learned senior counsel for the applicant on this repeated bail application. The earlier bail application preferred before this Court was heard extensively and when the Court started dictating the order indicating that it was not a case for grant of bail, then learned counsel for the applicant prayed for withdrawal of the application. On that premise the application was allowed to be withdrawn and disposed of. Then directions were given for expeditious hearing of the sessions case. Said earlier order was passed on 17th April 2014. Thereafter, on 25th November 2014 the matter was taken before the another bench and that time again said second application was allowed to be withdrawn by the Court and the application was disposed of. It so

happened on 25th November 2014 before (Coram :M.L.Tahiliani, J.) Now this is the third application and second before this bench. Firstly, it must be mentioned that when the earlier application was allowed to be withdrawn by order dated 17th April 2014 this Court had exhaustively heard the arguments when the allegations against the present applicant were that of firing the bullet on the victim and causing instantaneous death of the victim on the broad day light on 24th April 2012. It so happened that in the mid of dictating the order in the earlier application for bail, a prayer was made on behalf of the applicant for withdrawal. As such apparently it was thought fit by this Court not to discuss the entire material then argued and analyzed by this Court while coming to the conclusion as to no case made out for grant of bail. Under this premise this repeated bail application is now taken before this Court.

2. Learned senior counsel for the applicant emphasized that the alleged act attributed to the applicant was possibly under the exercise of the right of private defense of the applicant-accused. This is more so, further argued, in view the fact that the motor vehicle in which the applicant came to the spot had some blood stains on the interior and the windscreen of the motor vehicle was broken. By

pointing out this it is submitted on behalf of the applicant that initially the first informant and his brother i.e. the victim, were the persons who had initiated the quarrel and the victim himself banged on the windscreen of the car, the applicant was driving. It is further submitted that according to the first information the accosting of the first informant and his victim brother was a chance and there was no preparation by the present applicant to stop them on there way and then open the fire. It is argued that because of the earlier action of the victim in of banging on the windscreen of the car, apparently the right of private defense was the outcome and out of this private defense there could have been firing by the applicant. Lastly, it is argued that though the earlier directions were given by this Court for expeditious hearing of the sessions case, till date the case is not taken up for hearing.

3. Learned APP for the State on instructions from the concerned officer stated that after withdrawal of the first bail application in April 2014 and withdrawal of the second bail application in November 2014, an application for discharge was preferred by the present applicant on 05th December 2014 and thereafter the said application was heard at length and the order was passed by Additional

Sessions Judge, Kalyan on 12th June 2015. The final order reads thus :-

- (i) The application at Exh.43 is stands rejected.
- (ii) The matter is posted for framing of charge as the case is expedited by Hon'ble High Court.

Learned APP further stated that the matter is already posted on 14th August 2015 for framing of charge.

4. In any event this Court has earlier come to the conclusion after the hearing the matter at length that it was not a case for grant of bail. There is nothing to come to the different conclusion and to consider the present application for bail favorably. Moreover, the intervening events as narrated by the learned APP, though definitely known to the applicant, they are not apparently disclosed to the learned counsel as no such arguments were made before the Court except mentioning that the case did not come up for trial though directions were given by this Court earlier.

5. In view of the above it is not a case in which the present applicant can be released on bail and hence present application is accordingly dismissed and disposed of.

(A.R. JOSHI, J.)